

(ii) Since the present value of an annuity for a term of 50 years exceeds the corpus, the annuity may exhaust the trust before all payments are made. Consequently, the annuity must be valued as an annuity payable for a term of years or until the prior death of the annuitant, with the term of years determined by when the fund will be exhausted by the annuity payments.

(iii) Using factors based on Table 90CM at 6.8 percent (see § 20.2031-7(d)(7) of this chapter), it is determined that the fund will be sufficient to make 17 annual payments, but not to make the entire 18th payment. Specifically, the initial corpus will be able to make payments of \$67,287.26 per year for 17 years plus payments of \$32,712.74 per year for 18 years. The annuity is valued by adding the value of the two separate temporary annuities.

(iv) Based on Table H of Publication 1457 (a copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402), the present value of an annuity of \$67,287.26 per year payable for 17 years or until the prior death of a person aged 60 is \$588,016.64 ($\$67,287.26 \times 8.7389$). The present value of an annuity of \$32,712.74 per year payable for 18 years or until the prior death of a person aged 60 is \$292,196.74 ($\$32,712.74 \times 8.9322$). Thus, the present value of the charitable annuity interest is \$880,213.38 ($\$588,016.64 + \$292,196.74$).

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time the gift is completed. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date the gift is completed, that individual shall be presumed to have not been terminally ill at the date the gift was completed unless the contrary is established by clear and convincing evidence.

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example. Terminal illness. The donor transfers property worth \$1,000,000 to a child in exchange for the child's promise to pay the

donor \$103,000 per year for the donor's life, payable annually at the end of each period. The donor is age 60 but has been diagnosed with an incurable illness and has at least a 50 percent probability of dying within 1 year. The section 7520 interest rate for the month of the transfer is 10.6 percent, and the standard annuity factor at that interest rate for a person age 60 in normal health is 7.5590. Thus, if the donor were not terminally ill, the present value of the annuity would be \$778,577 ($\$103,000 \times 7.5590$). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) *Effective date.* Section 25.7520-3(a) is effective as of May 1, 1989. The provisions of paragraph (b) of this section are effective with respect to gifts made after December 13, 1995.

[T.D. 8540, 59 FR 30177, June 10, 1994, as amended by T.D. 8630, 60 FR 63919, Dec. 13, 1995; T.D. 8819, 64 FR 23228, Apr. 30, 1999; T.D. 8886, 65 FR 36943, June 12, 2000]

§ 25.7520-4 Transitional rules.

(a) *Reliance.* If the valuation date is after April 30, 1989, and before June 10, 1994, a donor can rely on Notice 89-24, 1989-1 C.B. 660, or Notice 89-60, 1989-1 C.B. 700 (See § 601.601(d)(2)(ii)(b) of this chapter), in valuing the transferred interest.

(b) *Transfers in 1989.* If a donor transferred an interest in property by gift after December 31, 1988, and before May 1, 1989, retaining an interest in the same property and, after April 30, 1989, and before January 1, 1990, transferred the retained interest in the property, the donor may, at the donor's option, value the transfer of the retained interest under either § 25.2512-5(d) or § 25.2512-5A(d).

(c) *Effective date.* This section is effective as of May 1, 1989.